



U.S. DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

Docket No. USCBP-2021-0050

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection-014 Regulatory Audit Archive System (RAAS) System of Records

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The U.S. Department of Homeland Security (DHS) is issuing a final rule to extend the exemptions from certain provisions of the Privacy Act to the updated and reissued system of records titled, “DHS/U.S. Customs and Border Protection-014 Regulatory Audit Archive System (RAAS) System of Records.” Specifically, the Department exempts portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Debra Danisek, Privacy.CBP@cbp.dhs.gov, (202) 344-1610, CBP Privacy Officer, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229. For privacy issues please contact: Lynn Parker Dupree, Privacy@hq.dhs.gov, (202-343-1717), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, D.C. 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking in the Federal Register, 81 FR 19932, April 6, 2016, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. DHS reissued the “DHS/CBP-014 Regulatory Audit Archive System (RAAS) System of Records” in the Federal Register at 81 FR 19985, April 6, 2016, to provide notice to the public that DHS/CBP was updating the categories of records to include the capture of Employer Identification Numbers (EIN) or Social Security numbers (SSN), also known as a Federal Taxpayer Identifying Number, pursuant to 19 CFR 24.5, 19 CFR 149.3, and Executive Order 9397, as amended by Executive Order 13748.

DHS is revising the previously claimed exemptions from certain requirements of the Privacy Act for DHS/CBP-014 Regulatory Audit Archive System (RAAS) System of Records. DHS/CBP is not requesting an exemption with respect to information maintained in the system as it relates to data submitted by or on behalf of a subject of an audit. The Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routine uses. Disclosing the fact that a law enforcement or intelligence agency has sought particular records may affect ongoing law enforcement activity. Therefore, pursuant to 5 U.S.C. 552a(k)(2), DHS will claim exemption from section (c)(3) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information.

Some information in DHS/CBP-014 Regulatory Audit Archive System (RAAS) System of Records relates to official DHS law enforcement activities. These exemptions are needed to protect information relating to DHS law enforcement

activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemption proposed here is a standard law enforcement exemption exercised by a large number of federal law enforcement agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case-by-case basis.

DHS/CBP invited comments on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

II. Public Comments

DHS received no comments on the NPRM or the SORN and will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends chapter I of title 6, Code of Federal Regulations, as follows:

PART 5--DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 et seq.; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301.

Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. In appendix C to part 5, revise section 25 to read as follows:

Appendix C to Part 5 – DHS Systems of Records Exempt From the Privacy Act

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25. The U.S. Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-014 Regulatory Audit Archive System (RAAS) System of Records consists of electronic and paper records and will be used by DHS and its Components. The DHS/CBP-014 RAAS System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to, the enforcement of civil and criminal laws, and investigations, inquiries, and proceedings there under. The DHS/CBP-014 RAAS System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its Components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

- (a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or

evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) [Reserved]

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Lynn P. Dupree,
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U.S. Department of Homeland Security.

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